



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,237	02/24/2004	Yves Millou	1026-04	1050
35811 7590 10/12/2007 IP GROUP OF DLA PIPER US LLP ONE LIBERTY PLACE 1650 MARKET ST, SUITE 4900 PHILADELPHIA, PA 19103			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 10/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/785,237	Applicant(s) MILLOU ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10 and 14-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1617

DETAILED ACTION

Receipt is acknowledged of amendment filed on July 20, 2007. Claims 1-3, 5-8, 10, 14-22 are pending. Claim rejection made under 35 U.S.C. §112, 1st par., as indicated in the Office action dated January 18, 2007, is withdrawn in view of the claim cancellation made by applicants. Claim rejections made under 35 U.S.C. § 112, 2nd par., indicated in the same Office action, are also withdrawn. Claim rejections made under 35 U.S.C. §§ 102 (b) are modified to address the amended claims and new claims. Claim rejections made under § 103(a) are also modified to address new claims. Claim 10 was omitted from the previous rejection, and is addressed in this Office action.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1-4, 8, and 14-16, 20, 22-24 are rejected under 35 U.S.C. 102(b) as anticipated by Amrita ("Helichrysum italicum", 1999, XP002224497).

The Amrita online disclosure indicates the essential oil of *Helichrysum italicum*, grown in high altitudes and dry, sunny spots in Mediterranean region, has been commercially available as of 1999. The reference teaches that the essential oil is distilled from the flower part. See instant claim 2. The reference also teaches that the essential oil is added to skin care products for skin-rejuvenating properties. See instant claim 8. The claimed methods of 14-16, 22-24 are inherently practiced every time the prior art skin care products are used as intended.

Since the prior art Helichrysum essential oil is obtained from the same source as the presently claimed invention, the prior art essential oil inherently contains the same components as required by instant claim 4. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See In re Best, at 1255, 433. "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." See In re Spada at 709, 1658.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5, 6, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amrita as applied to claims 1-3, 8, 14-16, 20, 22-24 above, and further in view of Spina (Derwent ACC. No. 1999-471299, English abstract of FR 2774585).

The reference does not specifically mention the weight amount of the Helichrysum italicum oil in the cosmetic compositions.

Spina discloses a topical composition for scalp, which comprises Helichrysum italicum essential oil. See Abstract, Novelty; instant claims 1, 2, and 8. The abstract also teaches that the composition has anti-inflammatory, wound healing, and antiseptic effect. With respect to claim 5, the French patent indicates

Art Unit: 1617

that 1.1-1.3 g of *Helichrysum italicum* essential oil is used in 30 g of total preparation, which is equivalent to 3.7-4.3 wt %. See '585, p. 1, line 21; p. 2, component 3; instant claim 5.

Given the general teaching of the Amrita to make a topical formulation comprising *Helichrysum italicum* oil, the skilled artisan would have been motivated to look to the prior arts such as Spina for a more specific teachings on the amount of the active ingredient suitable for topical application. Furthermore, given the teaching of the specific functions of the essential oil (i.e., rejuvenation effect), the skilled artisan would have discovered a workable range of the active ingredient by routine experimentations.

Claims 7 10, 19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amrita as applied to claims 1-3, 8, 14-16, 20, 22-24 as above, and further in view of Afirat et al. (US2002/0119954 A1).

Amrita does not teach the nanospheres formulation of instant claim 7 or the additives of instant claim 10.

Afirat teaches cosmetic composition comprising ascorbic acid, and also teaches that moisturizing active agents, in case of incompatibility with other materials, are incorporated into nanospheres in order to isolate them from each other in the composition. See p. 3-4, [0061]. Essential oils and vitamin E are taught. See instant claim 10.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teaching of Amrita by incorporating *Helichrysum italicum* essential oil and/or vitamin E into nanospheres, as

Art Unit: 1617

motivated by Afriat, because both inventions of Amrita and Afriat are in cosmetic art, and Afriat teaches that it is well known in cosmetic art to incorporate essential oils or vitamin E moisturizing agent in nanospheres for stability of the composition and separation of the active ingredients during the storage. The skilled artisan would have had a reasonable expectation of successfully producing a stable composition comprising *Helichrysum italicum* in nanospheres.

Response to Arguments

Applicant's arguments filed July 20, 2007 have been fully considered but they are moot in view of new grounds of rejection in part, and not persuasive in part.

Applicants argue that the neryl acetate content in *Helichrysum italicum* depends on the region from which the plant is obtained. Applicants make reference to recent studies by Angion (2003) and Satta et al. (2000) to assert that the composition of the prior art products have only 28.9% of neryl acetate or less, but there is no evidence to show that the essential oil in Amrita is the same oil used in the Angion and Satta references.

With respect to the rejection made in view of Amrita, the prior art provides sufficient evidence to for the examiner to believe that the *Helichrysum italicum* used to make the rejuvenation products is the same as that are used in the present invention. In the contrary, Amrita indicates that its *Helichrysum italicum* is obtained from Mediterranean region, where Corsica, applicants' source of *Helichrysum italicum*, is located. Thus, it is viewed that the *Helichrysum italicum*

Art Unit: 1617

used in the Amrita products are the same active ingredients that are used in the instant invention.

Conclusion

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu
Patent Examiner